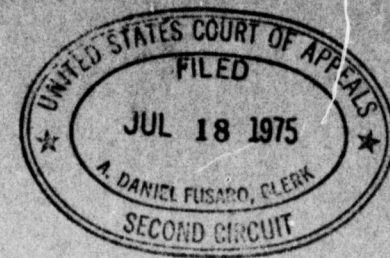


***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF AND
APPENDIX**



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MIGUEL AVILA-GALEGOS,

Petitioner,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent

B
A/S

Docket No.
74-2647

PETITIONER'S BRIEF AND APPENDIX

William H. Oltarsh
Attorney for Petitioner
225 Broadway
New York, N. Y. 10007

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PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JULY TERM 1975

Docket No. 74-2647

----- x
MIGUEL AVILA-GALLEGOS,

Petitioner,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.
----- x

PETITIONER'S BRIEF

Statement of the Issues

1. Whether the Immigration Judge should have granted a motion to suppress because the Immigration and Naturalization Service lacked probable cause or reasonable suspicion to arrest the petitioner-appellant.

2. Whether the Immigration Service had the right to dispense with a warrant in view of the fact that there was no urgent situation that re-

quired that the Immigration Service dispense with the requirement of a warrant.

5. Whether the Service failed to provide petitioner with Miranda warnings which resulted in the Service obtaining admissions which should have been suppressed.

Statement of the Case

Pursuant to Sec. 106(a) of the Immigration & Nationality Act, 8 U.S.C. Sec. 1105(a), petitioner petitions this Court for review of a final order of deportation entered against him by the Board of Immigration Appeals on December 6, 1974.

Statement of the Facts

On the morning of May 29, 1974 Immigration officers proceeded to a plant at National Vacuum Co. at Elmsford, New York, where they proceeded to interrogate aliens believed to be in the United States illegally. This was in response to a letter from the New York State Department of Labor stating that there were many aliens in that factory in illegal status. At the factory the Immigration officers were given access to the books of the company and as a result of their inspection of those books they requested the company to bring the petitioner, among others, to the cafeteria. In the cafeteria for all practical purposes the petitioner was under restraint in that he could not leave or do as he wished to do as is clear from his testimony given at the deportation hearing. He was not informed of his rights and whatever oral testimony he made was pursuant to the direction of the Immigration officers and was not made volun-

tarily and without restraint. At the cafeteria he was not warned of his rights and was only warned of those rights after he arrived at the Immigration Service where he was ultimately taken.

It was admitted that no warrant was ever taken out by the Immigration inspectors to arrest the petitioner.

At the deportation hearing counsel for the petitioner moved to suppress the evidence on the ground that his presence in the proceeding was obtained as the result of an unlawful arrest and that also any and all evidence which the Immigration had in its possession as his deportability was obtained as a result of said unlawful arrest. The Trial Judge denied the motion, held that petitioner was deportable as charged. In addition the Immigration Judge denied the granting of voluntary departure and entered an order of deportation against the petitioner directing deportation to Ecuador.

The petitioner timely appealed to the Board of Immigration Appeals on the ground that petitioner was not afforded a hearing apart from the deportation hearing on the motion to suppress the evidence; that the Judge failed to suppress all the evidence obtained by the Immigration Service as a result of the illegal arrest; and that the Judge had failed to suppress all the evidence obtained by the Immigration Service as a result of the failure to afford Miranda warnings to petitioner.

On December 6, 1974 the Board of Immigration Appeals sustained the finding of the Immigration Judge and dismissed the appeal.

This petition for review is from the decision of the Board of Immigration Appeals made on the 6th of December, 1974.

ARGUMENT

1. THE IMMIGRATION JUDGE SHOULD HAVE GRANTED A MOTION TO SUPPRESS BECAUSE THE IMMIGRATION & NATURALIZATION SERVICE LACKED PROBABLE CAUSE OR REASONABLE SUSPICION TO ARREST PETITIONER.

The Supreme Court has held that for an arrest without warrant to be constitutional, the facts and circumstances within the knowledge of the arresting officer must be reasonably trustworthy and sufficient to enable a reasonable and prudent man to form a judgment that the suspected person had committed or was committing an offense. Beck v. Ohio (1964), 379 U.S. 89, 13 L. Ed. 2d 142, 85 S. Ct. 223. Officers cannot arrest on the basis of mere suspicion. Wong Sun v. U.S. (1963), 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407. A "reliable" informer may be used provided that some of the information provided has been verified. Draper v. U.S. (1959), 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329. In the case at bar the arresting officers had not obtained a warrant before the arrest, and they submitted no proof that they had availed themselves of a reliable informer or verified any of the information provided.

Consequently, the Immigration Judge should have granted the motion to suppress and dismissed the case because the Immigration Service lacked clear, convincing and unequivocal legal evidence to prove that petitioner was illegally within the United States.

A mere tip by an informer is not enough to create probable cause to arrest without a warrant. Even if a search warrant is obtained, the police must show more than an assertion by an informer. Certainly as much is required without a warrant. Recznik v. Lorain (1968), 393 U.S. 166,

21 L. Ed. 2d 317, 89 S. Ct. 342. If less evidence were required for an arrest without a warrant, it would discourage resort to the procedures for obtaining a warrant. Whiteley v. Warden of Wyoming State Penitentiary (1971), 401 U.S. 560, 28 L. Ed. 2d 306, 91 S. Ct. 1031.

District Directors of the Immigration Service are authorized to issue warrants. See Abel v. U.S. (1960), 362 U.S. 217, 4 L. Ed. 2d 668, 80 S. Ct. 1056. There was no justification here to dispense with a warrant.

2. THE IMMIGRATION SERVICE HAD NO RIGHT TO DISPENSE WITH A WARRANT IN VIEW OF THE FACT THAT THERE WAS NO URGENT SITUATION WHICH REQUIRED THAT THE SERVICE DISPENSE WITH THE REQUIREMENT OF A WARRANT.

In the case at bar Immigration officers went to petitioner's employer as a result of having received an advice from the Department of Labor stating that there were many aliens in the factory in illegal status. The law is clear that the Immigration officer must act upon something more substantial than a casual rumor or a mere accusation. Spinelli v. United States, 393 U.S. 410. Henry v. United States, 361 U.S. 98, holds that for an arrest to be valid the facts and circumstances known to an officer must warrant him in believing that an offense had been committed. The Court stated that this requirement must be strictly enforced to protect the citizen. In the case at bar even though the arrest and search subsequently disclosed that the alien had no authority to remain in the United States, a mere suspicion is not enough for an officer of the law to lay hands on a citizen. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that the citizen be subject to

easy arrest. Henry v. United States, supra. In the case at bar the officers had no probable cause to arrest petitioner-appellant. The facts which were ascertained as a result of the initial illegal arrest could not subsequently justify the illegal arrest and search. The Judge should have granted the motion to suppress since the case against the appellant rested solely upon evidence which should have been suppressed.

Pursuant to a recent decision of the United States Supreme Court in 413 U.S. 266, Condrado Almeida-Sanchez, petitioner, v. The United States, /93 Supreme Court 2535 (1973), the Court held that Section 287 of the Immigration and Nationality Act could not justify a warrantless search without probable cause. The Court stated that Section 287 does not declare a field day for the government to search. The Court insisted upon probable cause as a minimum requirement.

There was no independent evidence to justify reasonable suspicion. Terry v. Ohio, 398 U.S. 1, 88 Supreme Court 1869, 20 L. Ed. 2d 889 (1968) held that it intrudes upon constitutionally guaranteed rights if an arrest is based on nothing more substantial than inarticulate hunches. To hold otherwise would give the Immigration officer an impermissible opportunity to detain any foreign looking person, any place, any time, with no more than a hunch or surmise that he is illegally here. Cheung Tin Wong v. Immigration and Naturalization Service, 468 F. 2d 1123, held that it would not be enough for an Immigration officer to question an individual simply because he looked to be of foreign descent.

At the moment the arrest was made the officers had acted upon prior information which was not proved sufficiently trustworthy to warrant a prudent man in believing that the person arrested had committed or was committing the act complained of. Draper v. U.S., supra.

Since 1914 the Supreme Court has held that as a rule of constitutional law fruits of an unreasonable arrest, search and seizure must be suppressed. Weeks v. United States (1914), 232 U.S. 383. To hold that the nature of the deportation hearing or the evidence developed at the hearing could buttress probable cause has never been condoned by any Court. The findings of the Immigration Judge were contrary to these Supreme Court decisions. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); Orozco v. Texas, 394 U.S. 324, 89 S. Ct. 1095, 22 L. Ed. 2d 311 (1969).

3. WHETHER THE SERVICE FAILED TO PROVIDE PETITIONER WITH MIRANDA WARNINGS WHICH RESULTED IN THE SERVICE OBTAINING ADMISSIONS WHICH SHOULD HAVE BEEN SUPPRESSED.

Petitioner was not accorded Miranda warnings until after he was arrested by the police and had made admissions of his unauthorized stay in the United States. Miranda v. Arizona held that a person deprived of freedom of action must be advised before any statement is taken from them and that if they want an attorney, counsel must be provided. Since petitioner was not advised of his right to be silent, to be represented by counsel or to have counsel supplied before his admissions after he was taken into custody, the evidence obtained by these admissions must be suppressed. Miranda v. Arizona, 384 U.S. 436, 86 Sup. Ct. 1602, 16 L. Ed. 2d 694 (1966); Miller v. U.S. (1958), 357 U.S. 301.

CONCLUSION

The decision of the Board of Immigration Appeals should be reversed and the deportation proceedings dismissed and terminated.

Respectfully Submitted,

WILLIAM H. OLTARSH,
Attorney for Petitioner-Appellant

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MIGUEL AVILA-GALLEGOS

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United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

DEC 6 - 1974

File: A20 529 996 - New York

In re: MIGUEL AVILA-GALLEGOS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William H. Oltarsh, Esquire
225 Broadway
New York, New York 10007

CHARGE:

Order: Section 241(a)(1), I&N Act (8 U.S.C.
1251(a)(1)) - Excludable at
entry - no immigrant visa

**APPLICATION: Termination of proceedings, or voluntary
departure**

**This is an appeal from an order of an immigration
judge finding the respondent deportable, denying his
application for voluntary departure, and directing his
deportation to Ecuador. The appeal will be dismissed.**

**In a well-reasoned decision, the immigration judge
set forth the facts and applied the pertinent legal
principles and case law. He found the arrest legal and
the evidence obtained as a result thereof was properly
considered on the issue of deportability. The immi-
gration judge also found that there was no evidence of**

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A20 529 996

any improper force or duress used in interrogating the respondent. The respondent was duly warned of his rights before he executed the affidavit at the Immigration Service office on May 29, 1974. His voluntary statement made at that time was properly admissible.

Our review of the record as well as contentions raised on appeal satisfies us (1) that the facts of record establish that the respondent was lawfully interrogated and arrested by Immigration and Naturalization Service officers and (2) that the respondent did in fact enter the United States without proper documents in violation of section 241(a)(1) of the Immigration and Nationality Act. We therefore conclude that there is clear, convincing and unequivocal evidence to support the order of deportation. In our judgment the hearing was fair in all respects. We agree with the immigration judge that on the facts of this case the grant of voluntary departure was not warranted. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

Acting Chairman

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway

New York, N. Y.

Fee Stamp

In the Matter of:

AVILA-GALLEGOS Miguel

File No. A20 529 996

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated August 23, 1974, in the above entitled case.
2. Briefly, state reasons for this appeal.

- a) Unlawful arrest, search and seizure in violation of the Fourth Amendment.
- b) Failure to give Miranda warnings according to the Fifth Amendment.

3. I do not desire oral argument before the Board of Immigration Appeals in Washington, D. C.
(do) (do not)

4. I am filing a separate written brief or statement.
(am) (am not)

August 26, 1974

Date

Signature of Appellant (or attorney or representative)

William H. Oltarsh

(Print or type name)

225 Broadway

Address (Number, Street, City, State, Zip Code)

New York, N.Y. 1007

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

- - - - - x

In the Matter of: :

MIGUEL AVILA GALLEGOS, : File No. 20 529 966

Respondent. :
- - - - - x

THE FACTS

On the morning of May 29, 1974 Immigration officers proceeded to a plant at National Vacuum Co. at Elmsford, New York, where they proceeded to interrogate aliens believed to be in the United States illegally. This was in response to a letter from the New York State Department of Labor stating that there were many aliens in that factory in illegal status. At the factory the Immigration officers were given access to the books of the company and as a result of their inspection of those books they requested the company to bring the respondent, among others, to the cafeteria. In the cafeteria for all practical purposes the alien was under restraint in that he could not leave or do as he wished to do as is clear from his testimony. He was not informed of his rights and whatever oral testimony he made was pursuant to the direction of the Immigration officers and was not made voluntarily and without restraint. At the cafeteria he was not warned of his rights and was only warned of those rights after he arrived at the Immi-

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gration Service where he was ultimately taken.

It was admitted that no warrant was ever taken out by the Immigration inspectors to arrest the respondent.

At the deportation hearing counsel for the respondent moved to suppress the evidence on the ground that the respondent's presence in the proceeding was obtained as the result of an unlawful arrest and that also any and all evidence which the Immigration had in its possession as to deportability of this alien was obtained as a result of said unlawful arrest. The Trial Judge denied the motion, held that the alien was deportable as charged. In addition the Immigration Judge denied the granting of voluntary departure and entered an order of deportation against the respondent directing deportation to Ecuador.

THE LAW

The law is clear that the information the police officer must act upon must be something more substantial than a casual rumor and something more substantial than a mere accusation. Spinelli v. United States, 393 U.S. 410. Henry v. United States, 361 U.S. 98 holds that for an arrest to be valid the facts and circumstances known to an officer must warrant him in believing that an offense had been committed. The Court stated that this requirement must be strictly enforced to protect the citizen. In the case at

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bar even though the arrest and search subsequently disclosed that the alien had no authority to remain in the United States, a mere suspicion is not enough for an officer of the law to lay hands on a ~~person~~ ^{person}. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that the ~~person~~ ^{person} be subject to easy arrest. Henry v. United States, supra. In the case at bar the officers had no probable cause to arrest the respondent. Thereafter when the respondent was turned over to the Immigration officers, the facts ascertained as a result of the initial illegal arrest could not subsequently justify the illegal arrest and search. The Judge should have granted the motion to suppress since the case against the respondent rested solely upon the evidence which should have been suppressed.

Pursuant to a recent decision of the United States Supreme Court in Condrado Almeida-Sanchez, petitioner, v. The United States, 93 Supreme Court 2535 (1973) the Court held that Section 287 of the Immigration and Nationality Act could not justify a warrantless search without probable cause. The Court stated that Section 287 does not declare a field day for the government to search. The Court insisted upon probable cause as a minimum requirement. There was no independent evidence to justify reasonable suspicion. Terry v. Ohio, 398 U.S. 1, 88 Supreme

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Court 1869, 10 L. Ed. 2d 889 (1968) held that it intrudes upon constitutionally guaranteed rights if an arrest is based on nothing more substantial than inarticulate hunches. To hold otherwise would give the Immigration officer an impermissible opportunity to detain any foreign looking person, any place, any time, with no more than a hunch or surmise that he is illegally here. Cheung Tin Wong v. Immigration and Naturalization Service, 468 F. 2d. 1123, held that it would not be enough for an Immigration officer to question an individual simply because he looked to be of foreign descent.

At the moment the arrest was made the officers had acted upon prior information which was not proved sufficiently trustworthy to warrant a prudent man in believing that the person arrested had committed or was committing the act complained of. Draper v. U.S. (1959) 358 U.S. 307.

Since 1914 the Supreme Court has held that as a rule of constitutional law fruits of an unreasonable arrest, search and seizure must be suppressed. Weeks v. United States (1914) 232 U.S. 383. To hold that the nature of the deportation hearing or the evidence developed at the hearing could buttress probable cause has never been condoned by any Court. The findings of the Immigration Judge were contrary to these

Supreme Court decisions. Miranda v. Arizona 384 U.S. 436.

Under the Fifth Amendment to the Constitution any admissions which the respondent made after being apprehended without being accorded the Miranda Warnings were inadmissible. Since the respondent was in custody at the time the officers questioned him, even admitting arguendo that he told the officers that he was an alien, his statements would not have been admissible since he had not been informed of his rights.

Officers cannot arrest on the basis of mere suspicion without basing it upon information from a reliable informed or verifying some of the information by what the officers themselves see before arresting a subject. Draper v. United States (1959) 358 U.S. 307.

WHEREFORE, it is respectfully prayed that the decision of the Immigration Judge be reversed and that the motion to suppress be sustained and the case dismissed, and for such other, further and different relief as may be just.

Respectfully Submitted,

WILLIAM H. OLTARSH
Attorney for Respondent

all practical purposes the alien was under arrest. He could not leave or do as he wished to do as is clear from his testimony. He was not informed of his rights until after his testimony he made was pursuant to the direction of the immigration officers and was not made voluntarily and without restraint. At the cafeteria he was not warned of his rights or was only warned of those rights after he arrived at the hotel.

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UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No. : A 20 529 996 - New York

AUG 23 1974

In the Matter of :)

MIGUEL AVILA-GALLEGOS) In Deportation Proceedings

-Respondent-)

CHARGE: I & N Act - Section 241(a)(1) - excludable at entry -
- no immigrant visa.

APPLICATION: Termination of proceedings, or voluntary departure.

In Behalf of Respondent:

David Oltarsh, Esq.,
225 Broadway
New York, N. Y., 10007

In Behalf of Service:

John P. Ruggiero, Esq.,
Trial Attorney
New York, N. Y., 10007

DECISION OF THE IMMIGRATION JUDGE

The respondent is the subject of an order to show cause and warrant of arrest issued by the Acting District Director, New York district on May 30, 1974, alleging that he is a native and citizen of Ecuador who entered the United States at San Ysidro, California on or about October 8, 1973 at which time it was his intention to remain indefinitely in the United States although not in possession of a valid immigrant visa or other entry document for permanent residence. He is charged with being subject to deportation under Section 241(a)(1) of the Immigration and Nationality Act in that he was excludable at entry as an immigrant without a valid immigrant visa or other entry document and was not exempted from the presentation thereof.

The record indicates that an order to show cause and warrant of arrest were previously issued on October 9, 1973 by the Deputy District Director, Los Angeles, California based upon the same entry and containing substantially the same allegations and charge of deportability as those contained in the order to show cause and warrant for arrest issued on May 30, 1974. However, it appears that the prior order to show cause cannot be located, and upon the Trial Attorney's request, to which respondent's counsel has acceded, the order to show cause dated May 30, 1974 is considered superseding, and it is that order to show cause upon which the instant proceeding is predicated.

Respondent's attorney has declined to admit the allegations of fact and charge in the order to show cause, urging that the proceedings have been instituted as a result of an unlawful arrest and illegal search and seizure of the respondent, and that the evidence presented to sustain the charge of deportability should be suppressed.

During the deportation hearing the respondent testified substantially as follows: that he is a native of Ecuador and has never been a citizen of the United States; that he entered this country near San Ysidro, California on October 8, 1973 to obtain work here; that after entering this country upon presentation of a local border crossing card, he boarded a bus and, while on the bus, he was

questioned by a United States Immigration Officer to whom he presented a residence card in another person's name, which had been given to him by an individual in Mexico and for which he had agreed to pay the sum of \$200; that he has never received an immigrant visa in his own name.

It appears that as a result of respondent's interrogation on the bus he was taken into custody and an order to show cause and a warrant of arrest issued on October 9, 1973, with a hearing scheduled at the Immigration Service detention facility at El Centro, California on October 16, 1973. In the meantime, he was released on bond furnished in New York City through an acquaintance, and he proceeded to the New York area where he obtained employment. According to his testimony, on May 29, 1974, while at work, he and several co-workers were summoned to the cafeteria of his place of employment by his supervisor and he was taken into custody by three immigration officers who were present there.

An investigator of the Immigration Service testified that ^{on} the morning of May 29, 1974 he proceeded to the plant of the National Vacuum Company at Elmford, New York, to interrogate aliens believed to be in the United States illegally; that the basis of this belief was a letter received from the New York State Department of Labor stating that there were many aliens in that factory in illegal status and in view of the labor problem in this country and in the

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county where the factory was located, it wanted an investigation conducted. According to his testimony, upon his arrival at the factory with two other immigration officers, he spoke to the General Manager and was given access to the books of the company; that as a result of an inspection and based on investigative technique, he requested that the respondent and five other employees be brought to the cafeteria; that when they were brought down, he identified himself as an immigration officer and asked the respondent where he was from, to which the respondent replied that he came from Ecuador; that he then asked the respondent whether he was a lawful resident of the United States and the respondent replied that he had use another person's card to enter the United States and was in this country illegally; that the respondent was asked whether he had a passport and stated that if was in the house of his aunt and uncle in North Tarrytown; that he accompanied the witness and other immigration officers to the house but the passport could not be located; that the respondent was subsequently taken to the immigration office in New York City. The investigator further testified that when respondent was brought into the cafeteria, no restraint was placed upon him; that from the time respondent left his place of employment with the investigators until he was taken to the immigration office, he was not questioned any further; that at the immigration office he was warned as to his rights, and a sworn statement was taken from him.

In the sworn statement respondent acknowledged that he is a native and citizen of Ecuador; that he last entered the United States near Tijuana, Mexico, on October 8, 1973 using the resident card of a Mexican man he had met in Mexico; that after entering the United States and riding on a bus for some distance, an immigration officer boarded the bus and questioned the passengers; that the officer discovered that respondent's papers were "false" and took him to the immigration office; that after two days respondent was told that a cousin had posted a bond for him and that he should return to the Immigration Office at San Diego at a later date, but instead, he proceeded to New York.

Although Counsel objected to the interrogation of the respondent on the ground that his presence in the instant proceeding was procured as the result of an unlawful arrest and search, that objection has no merit, since respondent's testimony given after the institution of deportation proceedings and the issuance of a formal warrant of arrest is not considered tainted. ELIASAS v. INS, 361 F. 2d, 529 (C.A. D. C., 1966); HUERTA-CABRERA v. INS, 466 F. 2d, 759 (7th Cir. 1972).

Under Section 257(a)(1) of the Immigration and Nationality Act, an officer of the Immigration Service is empowered without warrant to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. Under Section 257(a)(2)

of the said Act, an officer may arrest any alien in the United States if he has reason to believe the alien so arrested is in the United States in violation of any law or regulation regulating the admission, exclusion or expulsion of an alien and is likely to escape before a warrant can be obtained for his arrest.

In the instant case, the immigration investigator was justified in interrogating the respondent initially based upon information from The New York State Labor Department that there were many aliens in an illegal status working in the factory where respondent was employed. (Matter of PEREZ-LIVERA, P.A. Dec. 2132 (BIA 1972)). During his perusal of the company records, it appeared that the respondent could reasonably be suspected of being such an alien. When the respondent was questioned, and stated that he came from Ecuador and had entered the United States with somebody else's residence card, the investigator could reasonably assume that respondent had no lawful right to remain in the United States and was justified in detaining him, in the belief that he was likely to attempt to escape before a warrant for his arrest could be issued.

CHENG YIM WONG v. INS, 458 F. 2d, 1123, at page 1123-1129 (C.A.D.C. 1972). Since the arrest was legal, any evidence obtained thereby may properly be considered on the issue of deportability. CHI/ AH, PANG v. INS, 368 F. 2d, 637 (3rd Cir. 1966); Cert. denied, 386 U. S.

1037; Shing Hang Tsui v. INS, 389, F. 2d, 994 (7th Cir. 1968).

There is no evidence that any improper force or duress was used against the respondent in interrogating him. He was duly warned of his rights before he executed the affidavit at the immigration office on May 29, 1974. Hence, his voluntary statement made at that time may be considered in this proceeding (Matter of AU, Yim and Lam, 13, I & N Dec. 294 (BIA, 1969); Shing Hang Tsui, supra. As no showing has been made that any of the evidence presented at the hearing on the issue of deportability was illegally obtained, the respondent's motion to suppress cannot be sustained.

Upon consideration of the entire record in the case, it is concluded that respondent's deportability as charged in the superseding order to show cause has been established by clear, unequivocal, and convincing evidence.

Insofar as respondent's application for voluntary departure is concerned, the record reflects that he appears to be statutorily eligible for this privilege. However, he has no close family ties in this country or other outstanding equities in his favor. Considering the fact that the respondent entered the United States unlawfully with the intention of working here, in possession of a resident alien's card in the name of another person, he does not deserve the exercise of discretionary relief. Consequently, an order of deportation will be entered against him. He has designated Ecuador as the country to

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which he prefers to be deported and deportation will therefore
be directed to that country.

ORDER: IT IS ORDERED that the respondent be deported from the
United States to Ecuador on the charge contained in the order to
show cause.

Henry I. Millman

HENRY I. MILLMAN
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

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In the Matter of	:	A20 529 996 - New York	JUL 16 1974
Deportation Proceedings	:	In Behalf of Respondent:	Oltarsh, Flattery " Oltarsh, Esq.
against	:		225 Broadway
	:		New York, N. Y. 10007
MIGUEL AVILA-GALLEGOS	:	In Behalf of Service:	John P. Ruggiero, Esq.
Respondent	:		Trial Attorney
-----	:		

ORDER OF THE IMMIGRATION JUDGE

The respondent is the subject of an Order to Show Cause, Notice of Hearing and Warrant for arrest of alien issued by the Acting District Director, New York District on May 30, 1974. During the course of a hearing held on June 14, 1974 under the Order to Show Cause it appeared that an Order to Show Cause and Warrant of Arrest was issued against the respondent on October 9, 1973 by the Deputy District Director, Los Angeles, California, based on the same entry referred to in the Order to Show Cause issued on May 30, 1974. However, the record does not clearly reflect the disposition of the earlier Order to Show Cause. Consequently, the hearing should be reopened to clarify the record, and for further appropriate action.

ORDER: IT IS ORDERED that the hearing be reopened for further proceedings in accordance with the foregoing.

Henry I. Millman
HENRY I. MILLMAN
Immigration Judge

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UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of

AVILA-Gallegos, Miguel
aka HALLER-Berner

Respondent.

To: Mr. Miguel AVILA-Gallegos

File No. A 20 529 996

c/o U. S. Immigration and Naturalization Service
Chula Vista, California

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Mexico
and a citizen of Mexico;
3. You entered the United States at San Ysidro, California
or about October 8, 1973 on
(date);
4. You were then entering for the purpose of residing indefinitely
in the United States;
5. You did not then possess or present an immigrant visa;
6. You have never been admitted into the United States for permanent residence.

In the best interest of the Government;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document and not exempted from the possession thereof by said act or regulations made thereunder, under Section 212(a)(20) of the Act.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at the Service Detention Facility El Centro, California, October 16, 1973, or sooner if possible at 9 a m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated:

October 9, 1973

IMMIGRATION AND NATURALIZATION SERVICE

Form I-221
(Rev. 3-30-67)

(F)

David J. Williams
(signature and title of issuing officer)
Acting District Director
Los Angeles, California

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

When you appear you may, if you wish, admit that the allegations contained in the Order to Show Cause are true and that you are deportable from the United States on the charges set forth therein. Such admission may constitute a waiver of any further hearing as to your deportability. If you do not admit that the allegations and charges are true, you will be given reasonable opportunity to present evidence on your own behalf, to examine the Government's evidence, and to cross-examine any witnesses presented by the Government.

You may apply at the hearing for voluntary departure in lieu of deportation. Moreover, if you appear to be eligible to acquire lawful permanent resident status the special inquiry office will explain this to you at the hearing and give you an opportunity to apply.

You will be asked during the hearing to select a country to which you choose to be deported in the event that your deportation is required by law. The special inquiry officer will also notify you concerning any other country or countries to which your deportation may be directed pursuant to law; and upon receipt of this information, you will have an opportunity to apply during the hearing for temporary withholding of deportation if you believe you would be subject to persecution in any such country on account of race, religion, or political opinion.

Failure to attend the hearing at the time and place designated hereon may result in your arrest and detention by the Immigration and Naturalization Service without further notice, or in a determination being made by the special inquiry officer in your absence.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

(signature of respondent)

Before:

(signature and title of witnessing officer)

(date)

CERTIFICATE OF SERVICE

This order and notice were served by me on 10/3/23 in the following manner:

BY PERSONAL DELIVERY TO RESPONDENT

J. M. Davis
(signature and title of employee or officer)
BORDER PATROL AGENT

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF

FILE A- 80 620 918 - New York

Miguel Avila-Colleges

IN Deportation PROCEEDINGS

- Respondent -

TRANSCRIPT OF HEARING

Before: Henry I. Hillman, Immigration Judge

Date: June 16, 1974 Place: 22 West Broadway, New York, N. Y.

Transcribed by P. J. Killela Recorded by Dietzsch

Official Interpreter Mrs. Ann Rosner

Language Spanish

APPEARANCES:

For the Service:

John P. Bugliaro, Esq.
Trial Attorney

New York, N. Y.

Station

For the Respondent:

David Oltarsh, Esq.

225 Broadway

New York, N. Y.

(of Counsel: Oltarsh, Blatter & Oltarsh)

1 IMMIGRATION JUDGE TO RESPONDENT (through official interpreter):

2 Q Will you state your full and correct name?

3 A Miguel Avila Gallegos.

4 Q I have before me an order to show cause and notice of hearing issued
5 by an Immigration Officer on May 30, 1974, charging that a person of
6 your name is unlawfully in the United States and subject to deporta-
7 tion. Did you receive a copy of this paper?

8 A Yes.

9 Q This hearing is being held to decide what must be done with you under
10 the immigration laws of the United States, do you understand?

11 A Yes.

12 Q At this hearing you have the right to have your own lawyer or other
13 duly authorized representative. Are you represented by Mr. Oltarsh?
14 Is he your lawyer?

15 A Yes.

16 IMMIGRATION JUDGE: Counsel, are you ready to proceed with this hearing before
17 me now?

18 MR. OLTARSH: Yes, your honor.

19 IMMIGRATION JUDGE: Mr. Riggiero, are you?

20 MR. RUGGIERO: The government is ready.

21 IMMIGRATION JUDGE TO RESPONDENT:

22 Q Mr. Avila will you stand up and raise your right hand. Do you solemnly
23 swear that all the statements you are about to make in this proceeding
24 will be the truth, the whole truth, and nothing but the truth, so help
25 you God?

26 A Yes.

20

1 IMMIGRATION JUDGE: The Order to Show Cause is now entered in evidence as
2 Exhibit number One. Any objection Counsel?

3 MR. OLTAISH: No objection to its introduction.

4 IMMIGRATION JUDGE: In behalf of respondent Counsel are you willing to waive
5 the reading of the five allegations of fact and the charge contained
6 in the order to show cause?

7 MR. OLTAISH: Yes, sir, I am.

8 IMMIGRATION JUDGE: In behalf of the respondent are you willing to admit the
9 truth of the allegations in the order to show cause?

10 MR. OLTAISH: No, I am not, your honor.

11 IMMIGRATION JUDGE: Are you willing to admit the truth of any of the allega-
12 tions?

13 MR. OLTAISH: No.

14 IMMIGRATION JUDGE: And am I to assume that you are not prepared to concede
15 deportability as charged?

16 MR. OLTAISH: That's correct, your honor. I would just like, before the
17 hearing commences to call your honor's attention to the notice that I have
18 given to your honor sworn to the 7th day of June 1974 a copy of which has been
19 supplied to the government's attorney, and assert at this time on behalf of
20 the respondent that he makes the allegation that he was arrested without prob-
21 and therefore claims that any
22 able cause and without justification, /testimony or any claim that he is subject
23 to deportation is as a result of information obtained as the result of an il-
24 legal search and seizure. I thereby move at this time for the government to
25 justify the basis under which the respondent was arrested and taken into custody
26 as to justify the probable cause that existed in order to take the respondent
into custody and to arrest him.

21

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TRANSCRIPT OF HEARING

ONLY COPY AVAILABLE

1 IMMIGRATION JUDGE : All right, is your client, the respondent prepared to
2 testify? - concerning the facts surrounding his apprehension?

3 MR. OLTAISH: No, preliminary, the respondent is not prepared to so testify
4 yet because any statements that he made in support of such an allegation could
5 be used against him. I as his attorney am asserting a statement that he was
6 arrested without probable cause, that it is our contention that it is the govern-
7 ment that has to establish that it had reasonable grounds and probable cause
8 to take the respondent into custody and what were the circumstances of his
9 being apprised of his illegality.

10 IMMIGRATION JUDGE: Counsel, from what you say I must assume that the state-
11 ment contained in this notice, ^{- quote -} the respondent serves notice herewith that he
12 wishes to give sworn testimony at the hearing upon his personal knowledge
13 of the facts which show the illegal arrest search and seizure, is not a cor-
14 rect statement.

15 MR. OLTAISH: Yes it is a correct statement.

16 IMMIGRATION JUDGE: You have just indicated that he is not prepared to testify.

17 MR. OLTAISH: Preliminarily, I said.

18 IMMIGRATION JUDGE: This doesn't specify any time or any condition. When you
19 say preliminarily....

20 MR. OLTAISH: I'm modifying then the language in that notice to the extent that
21 I believe what was meant by that is that he stands ready to testify provided
22 the government meets the test of showing that they had probable cause or any
23 justification to arrest the alien.

24 MR. HUGGIERO: I think the alien has to meet the test of a basis for this re-
25 quest also.

26 IMMIGRATION JUDGE: All right, Counsel, at least I know your position and I

1 cannot accept this statement here at face value. I accept it only to the mod-
2 ification that you have indicated, that he is only prepared to testify if the
3 government first gives testimony, or evidence concerning the circumstances of
4 the arrest, is that correct?

5 MR. OLTAESH: That is the respondent's position. At this time I move that
6 this notice dated June 7, 1974 be made a part of this record.

7 MR. RUGGIERO: May I further add, Mr. Millman?

8 IMMIGRATION JUDGE: Yes.

9 MR. RUGGIERO: The last paragraph under the information act this is the wrong
10 tribunal for that.

11 IMMIGRATION JUDGE: Well, in any event, I'll mark this notice into evidence,
12 but I'll not grant the request contained in the notice, absent any testimony
13 given by respondent preliminarily concerning the circumstances surrounding the
14 arrest. I'll mark this as Exhibit # 2. Mr. Ruggiero, you may proceed with your
15 case.

16 MR. RUGGIERO TO RESPONDENT:

17 Q Mr. Avila, are you a citizen of the United States?

18 MR. OLTAESH: Objection.

19 IMMIGRATION JUDGE: On what grounds?

20 MR. OLTAESH: On the ground he is not obligated to respond to questions which
21 will incriminate himself in opposition, or, following my preliminary statement
22 I'll object, I will permit him to answer, but I'll object to him supplying in-
23 formation at this hearing - I'll object to his testimony ^{because} your honor HAS denied
24 the respondent the opportunity to cross-examine the arresting officers as to the
25 basis and cause, or whether any probable cause existed, as to his arrest. In
26 line with that denial of that relief, I will object at this point, your honor to

1 obligating the respondent to testify before he has an opportunity to chal-
2 lenge the probable cause, or the basis of his arrest.

3 IMMIGRATION JUDGE: Well, counsel, as far as I'm concerned, these objections
4 are premature, since no testimony or evidence has been presented at all yet,
5 on the question of lawful arrest, and as far as I'm concerned, the Trial At-
6 torney may be allowed to proceed with the presentation of the evidence, in
7 view of the fact that respondent has not answered the questions asked up to
8 this point, but I will not preclude the Trial Attorney from asking the respond-
9 ent, so that we may have the respondent's answer, even if his answer is a re-
10 fusal to testify.

11 MR. OLTARSH: Without the respondent refusing, I am objecting to the admiss-
12 ibility of this evidence.

13 IMMIGRATION JUDGE: Off the record. On the record.

14 IMMIGRATION JUDGE: Counsel, it is my understanding that your objection to the
15 interrogation of the respondent at this time is based on the ground that the
16 government has not established probable cause for his arrest, hence, I am
17 overruling your objection as premature unless I hear the specific questions.
18 I am also overruling your objection to the first question, and will permit the
19 Trial Attorney to proceed.

20 MR. HUGGIERO TO RESPONDENT:

21 Q I repeat the question, are you a citizen or national of the United States?

22 A No, sir, I am a citizen of Ecuador.

23 Q You were born in Ecuador?

24 MR. OLTARSH: Wait, before his answer, let the record note that I am object-
25 ing to each and every question, and I don't have to repeat my objection.

26 IMMIGRATION JUDGE: You are objecting to each question on the same ground?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

24

1 MR. OLTAHSH: Yes, I'll make a blanket objection, with your honor's permis-
2 sion, so that I don't have to repeat after every question, but I object to
3 any other questions dealing with respondent's deportability.

4 IMMIGRATION JUDGE: All right.

5 MR. RUGGIERO TO RESPONDENT:

6 Q Are your parents natives and citizens of Ecuador?

7 A Yes.

8 Q Were they ever citizens of the United States, to your knowledge?

9 A No.

10 Q Was there, at any time, issued to you, a visa for residence in the United
11 States as a lawful permanent resident?

12 A No.

13 Q When did you enter the United States?

14 A October 8th, then I posted a bond on October 11th.

15 Q And that was in San Ysidro, California?

16 A Yes.

17 Q And at the time you entered the United States, what was your intention
18 in coming to the United States?

19 A To look for an opportunity for my family.

20 Q Did you come here to look for work to help your family in Ecuador?

21 A Yes.

22 Q Did you have in - withdrawn, what type of paper did you have, when you
23 came to the United States?

24 A A green card, a resident card from somebody else.

25 Q Where did you get this resident's card from somebody else?

26 A An unknown man gave it to me in Mexico, but it was not his, it belonged

1 to somebody else.

2 Q In other words, the card you got from this unknown man in Mexico, this
3 green card, belonged to a different person, is that right?

4 A Yes, to a German man.

5 Q In other words, the card belonged to a man who was born in Germany?

6 A Yes the immigration man who detained me told me that that card belonged
7 to a man who was born in Germany because the surname was German.

8 Q But it was not your name on that card was it?

9 A No.

10 Q Did you pay any money for that card?

11 A I was supposed to pay him, but he trust me and I didn't pay him anything.

12 Q How much were you supposed to pay him to help you come into the United States?

13 A Two hundred dollars.

14 Q You came into the United States from Mexico, how did you do that, by bus,
15 did you walk, how?

16 A At the line, I crossed with a local card.

17 Q Was that local card your card?

18 A That card belonged to another person also, but when I crossed, they give
19 me another card, and then I took the bus.

20 Q And was the other card they gave you after you crossed, the green card
21 with the German name on it?

22 A The other one, yes, but the other was just a local one.

23 Q After you got across the line did you board a bus?

24 A I took a bus to Los Angeles, but I was detained after they got me on the bus.

25 MR. HUGGIERO: NOthing further.

26 IMMIGRATION JUDGE: Counsel, is there anything you wish to present on the issue

1 of deportability?

2 MR. OLTARSH: Not on the issue of deportability, your honor, but might I

3 cross examine the witness on the arrest?

4 IMMIGRATION JUDGE: if you wish to, all right.

5 MR. OLTARSH: Before I ask Mr. Avila any questions, will the government

6 concede that there was no warrant of arrest, that resulted in this arrest?

7 MR. RUGGIERO: The government is not conceding anything.

8 MR. OLTARSH TO RESPONDENT (through interpreter):

9 Q Mr. Avila, when you were taken into custody by the Immigration Officers,

10 what were you doing - in the United States?

11 A I was working.

12 Q Do you remember when it was that you were taken into custody?

13 A On the 29th.

14 Q Of what month?

15 A Month of May.

16 Q Do you remember what time of day it was?

17 A Between eleven and eleven-thirty a.m.

18 Q Now, from the time that you first saw any officials or officers of the

19 Immigration Service until the time that you were taken into custody, or

20 at any time, were you shown any warrant of arrest, or any document that

21 had your name on it, that indicated that they were looking for you par-

22 ticularly?

23 MR. RUGGIERO: Objection asking this man about documentations....

24 IMMIGRATION JUDGE: I'll permit the question.

25 BY RESPONDENT: No, sir, absolutely nothing. At that time my boss called me

26 and they had brought four or five other men to the office also.

1 MR. OLTARSH TO RESPONDENT:

2 Q What was done in the office.

3 A No, it was in the cafeteria, they called me and the others over.

4 Q Where?

5 A At the cafeteria, where people eat.

6 Q And this is at a factory or some plant where you were working?

7 A Yes, a factory.

8 Q Was this done under the direction or instructions of immigration offi-
9 cers?

10 MR. SUGGIERO: Objection, very vague? What was done?

11 IMMIGRATION JUDGE: Rephrase your question. Clarify your question.

12 MR. OLTARSH TO RESPONDENT:

13 Q Mr. Avila, when you were called to the cafeteria, were you directed to go
14 to the cafeteria?

15 A They called me and four other ones and he took us to the cafeteria and
16 when we arrived there the gentleman who were there they stood up and said
17 that they were from Immigration.

18 Q Mr. Avila, to your knowledge, do you know whether anything was said or done
19 by any officers of immigration to result in your being brought to this
20 cafeteria?

21 A I don't know, maybe they wanted to find out if we were working illegally.

22 Q You never saw the immigration officers prior to going to the cafeteria,
23 you never saw the immigration officers before that, is that right?
24 A No, sir.

25 Q How many immigration officers or officials were there in the cafeteria,
26 if you remember?

1 A Three.

2 Q What were you doing in this factory immediately prior to being directed
3 to go to the cafeteria?

4 A Working.

5 MR. OLTAISH: I have no further questions.

6 MR. HUGGIERO: The government has no further questions.

7 MR. OLTAISH: At this time I renew the motion to call upon the government to
8 justify the probable cause or basis of making the arrest and taking this re-
9 spondent into custody, and I call upon the government to justify what was
10 their source of information, or what basis they had, or what probable cause,
11 for the arrest and detention of this respondent.

12 IMMIGRATION JUDGE: I am going to grant the request this time, Mr. Huggiero.

13 MR. HUGGIERO: On what grounds?

14 IMMIGRATION JUDGE: This respondent has indicated that he was taken into cus-
15 tody without any showing as to what transpired concerning the circumstances
16 of his arrest.

17 MR. HUGGIERO: Fine.

18 MR. HUGGIERO TO RESPONDENT:

19 Q When was the first time you were ever stopped by immigration in the
20 United States?

21 MR. OLTAISH: Objection, it's not relevant on this arrest.

22 IMMIGRATION JUDGE: What bearing does it have?

23 MR. HUGGIERO: Subject to connection.

24 IMMIGRATION JUDGE: All right, I'll take it subject to connection.

25 MR. HUGGIERO TO RESPONDENT:

26 Q When was the first time you were arrested by the Service - withdrawn....

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1 . . .when was the first time you were stopped by immigration authorities
2 in the United States, after your entry on October 8, 1973?

3 A In San Ysidro.

4 Q Was that the same day you came across the border?

5 A Yes.

6 Q And did you then get on the bus after you got across the border?

7 MR. OLTAISH: Wait a second, Objection again, to this line of questioning...

8 May I have a blanket objection again to this whole line of questioning, as
9 having no relevance.

10 IMMIGRATION JUDGE: I'll take it subject to connection/

11 MR. SUGGIERO TO RESPONDENT:

12 Q Did you take a bus to travel to California after you crossed the border
13 from Mexico?

14 A To Los Angeles.

15 Q You took a bus go to to Los Angeles, right?

16 A Yes.

17 Q Was that bus stopped at any time before you got to Los Angeles?

18 A One hour after the time I took the bus, the bus was stopped at the
19 Control Point.

20 Q Which control point, were immigration, were American immigration men there?

21 A Yes.

22 Q And they got on the bus?

23 A Yes.

24 Q And they were asking people questions?

25 A Well, they just asked them to display to show their identification.

26 Q And did you show them this green card with the German name on it?

A Yes.

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1 Q And at that time, you were held, until October 11th?
A Yes,
2 and on the 11th, I was released.
3 Q You were released on a bond, right?
4 A Yes.
5 Q To come to New York, right?
6 A They didn't tell me where I should go.
7 Q Well, isn't it a fact that you said you were coming to New York? To
8 visit cousins in New York?
9 A - - -
10 Q Who put up the bond for you in California?
11 A A friend of mine had it sent over there.
12 Q He posted it in New York?
13 A Yes.
14 Q So that you could come from California to New York, isn't that correct?
15 A I don't know, because they just told me- you are free.
16 Q But the bond was posted in New York by a cousin?
17 A It was sent there.
18 Q And you were released, right?
19 A Yes.
20 MR. RUGGIERO: That's the basis.
21 DESIGNATION JUDGE: Mr. Ruggiero, did you wish to....
22 MR. RUGGIERO TO RESPONDENT:
23 Q Mr. Avila, I want to clarify something. When you came across the line
24 as you say from Mexico into the United States, what type of a card did
25 you use to come across at that point?
26 A A local card.

1 Q When you say a local card, do you mean it was a card that was used for
2 Mexicans to come into the United States if they wished to?
3 A I don't know. The person that gave me that card told me to use it to
4 cross from one side to the other, to come to United States.
5 Q Now this local card, the man told you that you could use it only to get
6 across the border?
7 A Yes, and that I should use the other one after that.
8 Q Now when you used this card to get across the border, did he then give you
9 the other card?
10 A Yes, and he took away the one he had given me before.
11 Q And the second card he gave you so you could travel in the United States,
12 that was the green card?
13 A Yes.
14 Q After you were stopped on the bus, where were you taken, if you know?
15 A To the control place, and they put us in jail until two o'clock in the
16 morning.
17 Q Were you able to contact your cousin?
18 A No.
19 Q Well, how did your cousin know that he had to put up this bond money for
20 you to be released?
21 A When I arrived that same day in California, I called him.
22 Q You called him, and when you got across the border from Mexico into the
23 United States, did you walk across the border?
24 A I walked to the point where the control is.
25 Q And you walked into the United States, through what you call the control -
26 where immigration is?

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32

1 A I walked only till the place where the buses were.
2 Q And when you got to the place where the buses were, is that the place
3 where the green card was given to you?
4 A Yes, there, he changed my card.
5 Q And you got on the bus?
6 A Yes, I bought a ticket and I took the bus.
7 MR. HUGGIERO: I wish to offer in evidence a document reflecting that there
8 was scheduled a hearing on the basis of an order to show cause, for October
9 15, 1973 in California before a Special Inquiry Officer.
10 IMMIGRATION JUDGE: Yes, Counsel?
11 MR. OLTAISH: I'll object to it as not being relevant to the probable cause
12 of any arrest on May 29th or whatever date he was trying to testify he was
13 arrested in New York.
14 IMMIGRATION JUDGE: I am going to overrule that objection, Counsel on that
15 ground, and I'll mark this into evidence as Exhibit Number 3.
16 MR. HUGGIERO TO WITNESS:
17 Q When you came to New York, did you report to immigration?
18 A No.
19 Q Since you came to New York have you ever reported to Immigration, prior
20 to the time you were arrested at the cafeteria?
21 A No.
22 MR. HUGGIERO: No further questions.
23 MR. OLTAISH: I have no further questions.
24 IMMIGRATION JUDGE TO RESPONDENT:
25 Q Mr. Avila, when you crossed the border from Mexico to the United States
26 on October 8th, 1973. Now, by way of clarification, was this the first

1 time, or when was the very first time that an immigration officer spoke
2 to you?

3 A On the same day.

4 Q Yes, but that was at the bus terminal, that is, it was on the bus, when
5 you were taking it at the bus terminal or had you spoken with an immigra-
6 tion officer in the United States before that time?

7 A It was before that, I crossed the border and I showed my local card.

8 Q And when you passed the border, you passed the border on foot, is that so?

9 A Yes, I passed in Tijuana.

10 Q But how?

11 A I was in Tijuana and I walked from Tijuana to the border and I crossed.

12 Q I see. And when you showed that first card, were you allowed to pass, so
13 that you went on to the bus terminal?

14 A Yes.

15 IMMIGRATION JUDGE: Mr. Ruggiero, the document that has been marked Exhibit
16 3, was this received in the regular course of business from the office at
17 Los Angeles, California?

18 MR. RUGGIERO: Yes, sir, we telephoned that office and they told us they had
19 an administrative file and we created a temporary file until the administra-
20 tive file arrived and that was taken out of the administrative file which I
21 have before me.

22 IMMIGRATION JUDGE: Gentlemen, is there anything else that either one of you
23 wishes to present on the issue of deportability?

24 MR. OLTAESH: Yes, in view of the fact that your honor asked Mr. Ruggiero
25 about that paper being received in the regular course of business and Mr.

26 Ruggiero responded to your honor, I would like to clarify in the record whether

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1 whether that communication was after the most recent arrest of Mr. Avila, which
2 is the subject of this proceeding.

3 MR. RUGGIERO: Yes, it would have to be, else how would we know that something
4 existed?

5 IMMIGRATION JUDGE: Counsel, are you making any application in behalf of the
6 respondent?

7 MR. OLTANSKI: If your honor please, it was my understanding that following the
8 respondent's testimony as to the circumstances of his arrest, you granted the
9 motion only to the extent of obligating the government to come forward to
10 show the reasonable basis for his arrest. It is my understanding that Mr.
11 Ruggiero believes that this is satisfied by showing that there was a warrant
12 of arrest issued in California and I cannot believe that he expects this court
13 to believe that they were actually looking for Mr. Avila with a known address
14 at this place of business in Tarrytown. I submit that after the arrest of
15 Mr. Avila, that was purely without probable cause, they then for the first
16 time had him under custody and then sent to California and then found out
17 that a warrant was existing in California. I merely renew, and state that
18 my understanding of your honor's granting the motion insofar as obligating the
19 government to meet the test of probability of cause for justification of the
20 arrest means that they have to produce the arresting officers to testify, were
21 they looking for Mr. Miguel Avila-Gallagos at that time and place, at that ad-
22 dress in Tarrytown, or were they just looking for anybody.

23 IMMIGRATION JUDGE: Counsel, the a in response to your statement, when I di-
24 rected Mr. Ruggiero to come forward with evidence, the record was not clear at
25 that time, at least not in my mind, that the subject, the respondent, had al-
26 ready been arrested, taken into custody in California, and released on bond.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. OLTAISH: It was not in my mind, either, your honor.

2 IMMIGRATION JUDGE: But the record has been clarified on that issue, and as
3 matters shape up now, the way it appears to me, his being taken into cus-
4 tody now is merely in the nature of what shall I say - because he failed to
5 comply with the bond requirement ...now wait... but let me clarify it this
6 way. That is not in the nature of a primary arrest as a basis for the insti-
7 tution of deportation proceedings....

8 MR. OLTAISH: I take issue with that, your honor. It is the claim of the re-
9 spondent that he was arrested without probable cause or justification. If
10 the government could show this court that they had knowledge that Mr. Miguel
11 Avila-Gallegos was in this factory, and they were looking for Mr. Miguel
12 Avila-Gallegos, I could not claim no probable cause.

13 MR. RUGGIERO: In taking him into custody, we don't have to show that knowl-
14 edge. You are saying that if a man is a fugitive, we have to be specifically
15 looking for him at that point, in order to make it a good arrest or re-arrest,
16 and I think you are on quicksand, Counsel.

17 IMMIGRATION JUDGE: Well, Counsel, that's the basis situation and the taking
18 of the respondent into custody here in New York, was not the initial arrest
19 which requires probable cause. Yes, Counsel, what is it?

20 MR. OLTAISH: Formally, on the record, I would ask your honor to make a de-
21 termination as to respondent's deportability, and then I would make applica-
22 tion for voluntary departure if on the other hand, your honor feels that you
23 want me to make it...

24 IMMIGRATION JUDGE: You may make it now. Normally, an application for volun-
25 tary departure is without prejudice to any finding of deportability. If you
26 wish to make the application, it should be made now as a part of this pro-

-ceding.

1 MR. OLTARSH: In the event that your honor finds the respondent deportable, I
2 would move that he be granted voluntary departure in lieu of deportation.

3 IMMIGRATION JUDGE: Do you wish to question him?

4 MR. OLTARSH: Yes.

5 IMMIGRATION JUDGE: All right, go ahead.

6 MR. OLTARSH TO RESPONDENT:

7 Q Mr. Avila, have you ever been convicted of any crime in either the
8 United States or in any other country?

9 A No.

10 Q Have you ever been a member of the Communist Party?

11 A No.

12 Q If you are granted the permission or the privilege of leaving the United
13 States as a matter of discretion and in lieu of deportation would you....

14 MR. RUGGIERO: Leaving voluntarily...

15 MR. OLTARSH TO RESPONDENT:

16 Qyes, voluntarily, would you comply with such permission or right, to
17 leave the country?

18 A Yes.

19 Q And did you have or would you be able to gather the funds necessary to
20 pay for your own transportation?

21 A Yes.

22 Q And to which country would you choose to go if you were ordered deported
23 in lieu of voluntary departure?

24 A Ecuador, my country.

25 MR. OLTARSH: I have no further questions.

26 IMMIGRATION JUDGE: Mr. Ruggiero?

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1 MR. HUGGIERO: Nothing further.

2 IMMIGRATION JUDGE TO RESPONDENT:

3 Q Mr. Avila, why didn't you report to the immigration office in New York
4 in accordance with the arrangement made when you were permitted to
5 leave California?

6 A I had no knowledge of that.

7 Q Well, when a bond was posted for you in California, or at least, posted
8 through the New York Office, by your cousin, as you say, what did you think
9 was the purpose of that bond?

10 A To be released on bond.

11 Q Well, did you just think you could come to New York and stay here in-
12 definitely?

13 A Yes, because I came from Los Angeles here, and then I didn't go back.

14 IMMIGRATION JUDGE: Is there anything else you wish to present?

15 MR. HUGGIERO: No, sir.

16 MR. OLTARSH: Nothing.

17 IMMIGRATION JUDGE TO RESPONDENT:

18 Q Mr. Avila, is there any reason why you can't go back to Ecuador if you
19 were ordered deported there?

20 A No, none.

21 IMMIGRATION JUDGE: All right, Off the record. Now, hearing resumed.

22 Let the record indicate that William Oltarsh of the firm of Oltarsh, Flattery
23 and Oltarsh has appeared here for the completion, or the balance of this hear-
24 ing, since Mr. David Oltarsh had another commitment. Now, Counsel, is there
25 anything else that you wish to present at this time in connection with this
26 proceeding?

... ..

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

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1 MR. OLDASH: No, sir.
2 IMMIGRATION JUDGE TO RESPONDENT:
3 Q Mr. Avila, how old are you?
4 A Twenty-two
5 Q Have you ever been married?
6 A I am single.
7 Q Do you have any close blood relatives in the United States?
8 A Just cousins.
9 IMMIGRATION JUDGE: All right, gentlemen, I will defer my decision at this
10 time.
11 IMMIGRATION JUDGE TO RESPONDENT (through the official interpreter):
12 Q Mr. Avila, have you understood everything that was asked of you at
13 this hearing?
14 A Yes.
15 IMMIGRATION JUDGE: The hearing is closed.

16
17
18 I hereby certify that to the best of my knowledge and
19 belief the foregoing pages numbered 1 through 20
20 are a complete and accurate transcript of the above
21 described proceedings.

22
23
24
25
26
Signature
Title

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A-

20 529 938 - New York

Miguel Ayila-Gallegos

IN Deportation

PROCEEDINGS

-Respondent-

TRANSCRIPT OF HEARING

Before: Henry I. Millman, Immigration Judge

Re-opened:
Date: August 7, 1974 Place: 20 West Broadway, New York, N.Y.

Transcribed by P. J. Killela Recorded by Dictabelt

Official Interpreter Mrs. Ana Mosner

Language Spanish

APPEARANCES:

For the Service:

For the Respondent:

John P. Riggiswo, Esq.,

David Oltarsh, Esq.,

New York, N. Y. 10007

225 Broadway

Station

New York, N. Y. 10007

40

1 IMMIGRATION JUDGE TO THE RESPONDENT (through official interpreter):

2 Q Will you state your name?

3 A Miguel Avila Gallagos.

4 Q Are you still represented by Mr. Oltarsh?

5 A Yes.

6 IMMIGRATION JUDGE: Counsel, pursuant to an order entered on July 16, 1974
7 this proceeding has been reopened to clarify the record with respect to the
8 issuance of the order to show cause against the respondent, referred to in
9 Exhibit 3 in these proceedings, that is the disposition of the issuance of
10 the order to show cause, and for such other action as may be appropriate.
11 I presume you are ready to proceed with the hearing now?

12 MR. OLTARSH: Yes, sir.

13 IMMIGRATION JUDGE: And you are ready, Mr. Ruggiero?

14 MR. RUGGIERO: The government is ready, Mr. Hillman.

15 IMMIGRATION JUDGE: Mr. Ruggiero, did you wish to question the respondent?

16 MR. RUGGIERO: At this time I did wish to make a statement.

17 IMMIGRATION JUDGE: Go ahead.

18 MR. RUGGIERO: At this time I request that the Order to Show Cause issued on
19 May 30, 1974 supersede the initial order to show cause which I think is Exhibit
20 3...

21 IMMIGRATION JUDGE: No, Exhibit One is the order to show cause...

22 MR. RUGGIERO: I wish that to supersede Exhibit 3, ...

23 IMMIGRATION JUDGE: When you say supersede, what do you mean...

24 MR. RUGGIERO: What exhibit 3 represents.

25 IMMIGRATION JUDGE: In other words, are you saying that the original order to
26 show cause referred to as Exhibit 3, which is not available?

TRANSCRIPT OF HEARING

1 MR. RUGGIERO: It's not available, all I have is a reconstructed order to
2 show cause, and what I wish is that the May 30th order to show cause to super-
3 sede that..

4 IMMIGRATION JUDGE: All right.

5 IMMIGRATION JUDGE: Counsel is there anything you wish to say in that respect?

6 MR. OLTAISH: No.

7 IMMIGRATION JUDGE: All right, then I will consider this as a superseding order
8 to show cause. Now, is there anything further?

9 MR. RUGGIERO: Well, this hearing de novo, it's a brand new re-opening, I
10 presume that we are starting right from scratch, is that right?

11 IMMIGRATION JUDGE: Off the record. On the Record.

12 Gentlemen, as the result of an off the record discussion, it is agreed that
13 the prior record remain intact and this request, that the order to show cause
14 dated May 30, 1974 will be considered the superseding one..

15 MR. RUGGIERO: Which is the one that he pleaded to...

16 IMMIGRATION JUDGE: Absolutely, and in this connection Counsel, I take it
17 that the objection which was previously made to the respondent's testimony
18 given at the prior hearing on the issue of deportability is solely on the
19 basis that his presence at this hearing in this proceeding was procured
20 illegally.

21 MR. OLTAISH: Yes.

22 IMMIGRATION JUDGE TO WITNESS(Investigator Jacobs):

23 Q Mr. Jacobs, will you stand and raise your right hand.

24 Do you swear that everything that you will say today in this hearing
25 will be the truth, the whole truth, and nothing but the truth, so help
26 you God?

A I do.

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1 Q All right, be seated.

2 IMMIGRATION JUDGE: You may proceed, Mr. Ruggiero.

3 MR. RUGGIERO TO INVESTIGATOR JACOBS?

4 Q Mr. Jacobs, did you have occasion on May 29, 1974, the morning of that
5 date, to visit the National Vacuum Company at 375 Executive Boulevard, in
6 Elmsford, New York?

7 A Yes.

8 Q Why did you go to that factory? To that particular factory.

9 A To interrogate aliens, we received information, would you like the source
10 of the information?

11 Q Yes.

12 A From the New York State Department of Labor, I believe it was the Secretary
13 of Labor who advised us that there are many aliens working there in illegal
14 status and in view of the labor problem in New York State in that particular
15 county, he would like us to investigate.

16 Q So that the Secretary of the New York State Department of Labor -- I want
17 to make this clear - it was on the basis of information from that source
18 that you went to the factory?

19 A Yes it is.

20 Q And after you got to the factory did you have occasion to speak to the
21 alien seated here?

22 A Yes, I did.

23 Q And did you identify yourself before speaking to him?

24 A Yes, I did.

25 Q And after identifying yourself did you attempt to determine whether he was
26 an alien who was illegally in the United States?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A Yes, I did.

2 Q And did you determine that he was an alien illegally in the United States?

3 A Yes.

4 Q And, when you determined that he was an alien illegally in the United
5 States, what did you do?

6 A I asked him where his passport was and he informed me that it was at his
7 aunt or uncle's house in North Tarrytown.

8 Q And did you ask him if he would take you there?

9 A Yes, I asked him if it was possible he would take us there. He said yes.
10 As a matter of fact, he said he didn't know the address but he said he knew
11 how to get there, he gave us directions and he said somebody would be home,
12 you know, to let us in and he could find it for us.

13 Q While travelling to the house did you ask him any more questions regarding
14 his alienage?

15 A No.

16 Q You finally got to the house?

17 A Yes.

18 Q When you got there what happened?

19 A We went upstairs, we knocked on the door, I guess his aunt it was, she let
20 us in. I told the aunt I was with the Immigration Service I showed her
21 my identification, I had Investigator Kaminsky and Investigator Schechter
22 with me. We explained to her what the problem was, we spoke to his aunt.
23 There were three of us. there were five little children. He offered us
24 coffee, and two of us sat down watching television while one of us went
25 with the subject while he was you know, two of ^{us} were standing there while
26 he was looking for his passport.

1 Q Was the passport found?

2 A He couldn't find the passport, She didn't know where the passport was

3 either, so she made a telephone call to her husband who I assume was his

4 uncle and they came in twenty minutes, I believe he worked in a hospital

5 within twenty minutes he came down, and when he got to the apartment the

6 subject asked his uncle where the passport was and the uncle didn't know

7 anything about it.

8 Q And then what happened?

9 A and we saw we weren't going to find it,
Then- well I wanted to find the passport, and we had to have some identity

10 and if he couldn't find the passport, we'd like to take the alien down to

11 the office.

12 Q Now on the trip from the uncle- by the way where was the uncle located?

13 A North Tarrytown.

14 Q Now on the trip from the uncle's home in North Tarrytown to the office

15 here at 20 West Broadway, did any of you question the alien regarding

16 his status in the United States?

17 A No, that was all already set before we left the factory. We wouldn't

18 have taken him into custody if we didn't know what we had, prior to this.

19 Q After you got to the office was a statement taken from him?

20 A Yes.

21 Q Prior to the making of that statement was he given the usual warning?

22 A Yes, I believe there should be one in the file.

23 Q I show you the statement, is that the statement?

24 A That's the statement I took, yes.

25 Q And the warning given to him?

26 A Yes.

1 MR. RUGGIERO : I offer the statement.
2 MR. OLTARSH: I will object to it.
3 IMMIGRATION JUDGE: On what grounds?
4 MR. OLTARSH: Well on the same line of objection that was made at the previous
5 hearing.
6 IMMIGRATION JUDGE: Well can you be more specific, Counsel?
7 MR. OLTARSH: Well, on the grounds that any identification or information
8 indicating that this alien is in the country illegally should be suppressed
9 on the ground of the illegal and unlawful arrest and therefore the statement
10 taken after the illegal and unlawful arrest is subject to the same suppression
11 motion that I made at the last hearing.
12 IMMIGRATION JUDGE: Well, your objections overruled at this time I am entering
13 the affidavit into evidence as Exhibit number Four. All right, Mr. Ruggiero.
14 MR. RUGGIERO: I have no further questions.
15 IMMIGRATION JUDGE: Counsel?
16 MR. OLTARSH TO MR. JACOBS:
17 Q Mr. Jacobs, was the communication from the Secretary of Labor or the
18 Department of Labor of the State of New York, received by the Immigration
19 Service orally or in writing?
20 MR. RUGGIERO: I object, I don't see that it has any relevancy at all.
21 IMMIGRATION JUDGE: I'll permit the question.
22 BY WITNESS: Delivered in writing.
23 MR. OLTARSH TO MR. JACOBS:
24 Q Do you have a copy of that letter with you?
25 A No, it's in the files.
26 Q And is it your statement that this writing received from the Department of

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1 Labor of the State of New York, specifically mentioned this factory where
2 the respondent was employed?

3 A It specifically mentioned that factory.

4 Q Now, you were not aware, were you, prior to your arriving at that factory
5 of the particular presence of this individual respondent being - Miguel
6 Avila Gallegos, were you?

7 A No, I wasn't.

8 Q So it's a safe statement you had no knowledge whatsoever then of this
9 gentleman's identity, either at the factory or in the country?

10 A No, I didn't.

11 Q Now, when you got to the factory, did you go into the portion of the
12 factory where Mr. Avila Gallegos was working, or did you go to see a
13 supervisor, or a head of any department?

14 A I saw the general manager.

15 Q And subsequent to your conversation with the general manager, what was
16 the next time that you came face to face with Mr. Avila Gallegos, the
17 first time that you came face to face with Miguel Gallegos?

18 A I was given access to the books of the factory, and I requested to see
19 him and he was brought to me in the lunchroom, around the tables where
20 we were all seated.

21 Q Was he alone, or were there others?

22 A Six.

23 Q How many officers were there besides yourself, from the Immigration office?

24 A One.

25 Q And when these people at this factory were brought into - is it cafeteria?

26 A The cafeteria.

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United States Department of Justice — Immigration and Naturalization Service

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1 Q When the people at this factory were brought into the cafeteria, were
2 they at that point, as soon as they were brought into the cafeteria in
3 the presence of the Immigration Service officers, were they at that time
4 free in your opinion to leave that cafeteria? Do you understand my ques-
5 tion?
6 A Yes.
7 Q You mean, when they were brought into that cafeteria and you saw Mr. Avila
8 Gallegos, if he tried to turn around and walk out or if he did not come
9 in, and just walked out you would have permitted him to walk out?
10 A I understand the question, but you see, the situation in the cafeteria was
11 we were seated around the table and the officials in the factory, as a
12 matter of fact it was the shop leader, the union representative, and as
13 they walked to the door they all sat down and nobody left.
14 Q I am asking you if he was brought in and sat down there, and before you
15 started questioning him, and let's say, supposing you identified yourself
16 as an officer of the Immigration, I assume, that's the first thing you
17 say you did.
18 A Yes, I did.
19 Q Well, at that very moment, after you had just identified yourself as an
20 officer of the Immigration Service, if Mr. Avila Gallegos got up and
21 didn't say a word and walked out, would you have permitted him to walk out
22 after ~~at~~ you had identified yourself as an Immigration Officer? Would you
23 have just let him walk out of the room?
24 A I would have asked him where he was going.
25 Q You would have stopped him in other words, is that right?
26 A Not necessarily.

- 2-3

1 Q Well suppose you asked him where he was going and he didn't answer you
2 just just kept walking, or running out of the room, what would you have
3 done?
4 A I would try and talk to him.
5 Q Well, aren't you telling me that you would have stopped him and not per-
6 mitted him to just turn around and walk out after you had identified
7 yourself as an Immigration Officer?
8 A Well, it does happen that people do not want to talk to you.
9 Q And you just let them go.
10 A We let them go.
11 Q But you don't know whether in this particular instance you would have let
12 him go?
13 A I don't know, it depends on the situation.
14 Q Now, did Mr. Avila Gallegos tell you his name after you identified your-
15 self as an officer?
16 A Yes.
17 Q Did you ask him any further questions after he told you his name?
18 A I asked him where he was from?
19 Q Did he respond to that?
20 A Yes.
21 Q At that point, after he told you his name and his country, without any
22 further questions if he had turned around and walked out would you have
23 let him go?
24 A No, at that point I would not let him go.
25 Q And yet at that point is it a fair statement that you had no specific
26 knowledge that he was an illegal alien, from those two questions and answers?

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TRANSCRIPT OF HEARING

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1 MR. HUGGIERO: I object to these questions, he has a right to go on and determine
2 whether he is an illegal alien. Once he mentions Ecuador, I think
3 that question is totally improper and irrelevant at this point.

4 IMMIGRATION JUDGE: No, I'll permit the question.

5 MR. OLTAISH TO MR. JACOBS:

6 Q Is that a fair statement, Mr. Davis, that from those two questions and
7 answers his name and what country he was from, you had no specific knowl-
8 edge that he was an illegal alien at that point?

9 A At that point I would assume that the burden of proof is on him.

10 Q I did not ask you that.

11 A At that point I would not release him.

12 Q You would not let him leave at that point, but from those two questions
13 would you have knowledge that he was an illegal alien?

14 A No, I wouldn't.

15 Q Now, ---

16 IMMIGRATION JUDGE: Excuse me, just for clarification, when he responded to
17 your question, as to where he was from, did he say Ecuador?

18 BY MR. JACOBS: Yes, he did.

19 MR. OLTAISH TO MR. JACOBS:

20 Q Mr. Jacobs, was this interrogation and any subsequent interrogation in
21 English or in Spanish?

22 A This was in English and in Spanish.

23 Q Well, do you speak Spanish?

24 A I speak Spanish, yes.

25 Q Now, you testified on direct examination that Mr. Avila Gallegos signed
26 an acknowledgement of his rights before he made that statement which has

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1 been offered in evidence and introduced in evidence, admitted in evidence.
2 Was that the first time down at the office of the Immigration Service where he
3 made that statement where you, or anybody on your behalf advised the respondent
4 of his rights?

5 A In the office.

6 Q So from the time you first went to the factory, questioned him, drove him
7 to his aunt's house and then all the way down to Immigration, the first
8 time that he got advised of his rights was the signed paper when he gave
9 the statement at the office here, is that a fair fair statement?

10 A Yes.

11 Q Now, from what you told us, may I assume that at no time did Mr. Avila
12 Gallegos attempt to flee or run away or anything?

13 A No, he didn't.

14 Q And I believe it would also be a fair statement that from the first time
15 you saw him to when you got him down to the office of immigration that at
16 no time was he in the course or furtherance of the commission of a crime
17 of any crime?

18 A No, he wasn't.

19 I have no further questions. (by Mr. Oltarsh).

20 MR. RUGGIERO TO MR. JACOBS:

21 Q Mr. Jacobs, you determined at the factory that he was an alien illegally
22 in the United States. Did you stop all questioning at that time?

23 A Yes, no point in asking more.

24 Q And the next questioning was at the office, is that correct?

25 A Yes.

26 Q And at that time you gave him the warning, correct?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

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1 A Yes.

2 MR. HUGHES: No further questions.

3 IMMIGRATION JUDGE TO MR. JACOBS:

4 Q Mr. Jacobs, you said you had access to the books of the factory when you
5 arrived there. Did you call for the respondent and five others by name
6 on the basis of the examination of the books?

7 A By name, yes.

8 Q And what was the basis for that? For calling these people down?

9 A We have investigative technique I guess you call it, ways of looking at
10 records, you know, the information they give when they begin working at
11 a job, Social Security number, I can tell you - we can tell when the
12 card was issued and we can tell if a person is 23 or 24 years old and if he
13 has a Social Security card that is only one year old, obviously he wasn't
14 born a year ago.

15 Q In other words, what you are saying is that there is some information in
16 the records that made you feel that these six people might be in the
17 country illegally?

18 A Right, excuse me there were about fifteen people we did that day.

19 Q I see, you took these six at one time and then you took others?

20 A Right, at another time.

21 Q And after the respondent told you that he came from Ecuador, did you ask
22 him anything further, concerning his presence in the United States?

23 A I did.

24 Q And what did he say?

25 A He told me exactly how he came into the United States, he told me he entered
26 at San Ysidro and gave somebody else a passport, he did get through and

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United States Department of Justice - Immigration and Naturalization Service

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1 evidently the Border Patrol made a bus stop and double-checked and he
2 was caught the second time.

3 Q And he gave you that information orally at the factory?

4 A He did.

5 IMMIGRATION JUDGE: All right, gentlemen, anything further.

6 MR. OLTAISH TO MR. JACOBS:

7 Q Mr. Jacobs, may I assume that from the time you first went to the factory
8 until the time that you took Mr. Gallegos down to the immigration office
9 you had no warrant of any kind, did you?

10 A No, I didn't/

11 MR. OLTAISH: No further question.

12 IMMIGRATION JUDGE: All right you are excused thank you.

13 MR. JACOBS: Thank you.

14 IMMIGRATION JUDGE: All right, gentlemen, anything else?

15 MR. RUGGIERO: N^O thing by the government. Wait one moment.

16 IMMIGRATION JUDGE: Mr. Ruggiero, do you wish to question the respondent further?

17 MR. RUGGIERO: Yes, sir.

18 MR. RUGGIERO TO RESPONDENT:

19 Q Mr. Avila, your attorney if he asks for permission for you to leave the
20 United States voluntarily from the United States will you use your own
21 money to pay your passage and leave---when the government tells you?
22 Are you prepared to leave the United States at this time voluntarily?

23 A Yes.

24 MR. RUGGIERO: O. K.

25 IMMIGRATION JUDGE: Off the record. On the record. Counsel, I understand
26 that you are still urging the original objection that you made during the

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United States Department of Justice — Immigration and Naturalization Service

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1 course of this hearing, namely, that respondent's presence in this proceed-
2 ing is the result of an illegal arrest, is that right?

3 Mr. OLTAISH: Unlawful and illegal arrest, without probable cause, that's
4 correct.

5 IMMIGRATION JUDGE TO RESPONDENT:

6 Q Mr. Avila, at the risk of possible repetition, I believe you have
7 already stated that if you are ordered deported from the United States
8 you would prefer to be deported to Ecuador, is that correct?

9 A Yes.

10 Q And, is it also correct, it is your statement that there is no reason
11 why you cannot return to Ecuador, if you are deported there?

12 A Correct, there is no reason why I cannot go.

13 IMMIGRATION JUDGE: Anything further, gentlemen?

14 MR. OLTAISH: Nothing further.

15 MR. RUGGIERO: Nothing by the government.

16 IMMIGRATION JUDGE: All right, the hearing is closed and decision reserved.
17

18 I hereby certify that to the best of
19 belief the foregoing pages numbered R-1 and R-14
20 are a complete and accurate transcript of the above
21 described proceedings.

22 P. J. Bille
Signature

23 Title

24
25
26
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TRANSCRIPT OF HEARING

UNITED STATES DEPARTMENT OF JUSTICE
Immigration & Naturalization Service,
20 West Broadway,
New York, N.Y. 10007

In the Matter of

AVILA-GALLEGOS, Miguel

File No. A20 529-996

Respondent.

STATE OF NEW YORK)

COUNTY OF NEW YORK)

PLEASE TAKE NOTICE, that the undersigned, AVILA-GALLEGOS, Miguel, will move that the Immigration Service arrested, searched and seized the respondent without a warrant and/or without reasonable or probable cause. The Service will be called upon to assume the burden of justifying the basis and facts upon which it took respondent into custody. The respondent serves notice herewith that he wishes to give sworn testimony at the hearing upon his personal knowledge of the facts which show the illegal arrest, search and seizure.

The respondent herewith also demands that the arresting officers be subpoenaed and produced at the hearing because the respondent wishes to question them because their testimony is relevant and material to the issue of the unreasonable arrest, search and seizure which was made without

probable cause. This is a motion to suppress the evidence illegally obtained.

Under Freedom of Information Act Section 552(b)7 and such other portions of the Act as may be applicable herein; all notes and memoranda relating to this case and which formed any basis for the detention and seizing of the respondent are demanded to be produced or the attorney for the respondent be permitted to inspect the same. Also demanded are the names and addresses of any alleged informants relating to the said detention and seizure of the respondent.

Arrested, searched and seized Avila-Gallegos, Miguel

Sworn to before me this 12 day of June, 1974

WILLIAM H. OLTARSH
NOTARY PUBLIC, State of New York
No. 60-2861540
Qualified in Westchester County
Commission expires March 30, 1978

The respondent herewith also demands that the arresting officers be subpoenaed and produced at the hearing because the respondent wishes to question them because their testimony is relevant and material to the issue of the unreasonable arrest, search and seizure which was with

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. **A20 529 996**

In the Matter of

AVILA-BALLEOS, Miguel

Respondent.

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Ecuador and a citizen of Ecuador;
3. You entered the United States at near San Ysidro, California on
or about October 8, 1973
(date)

4. It was then your intention to remain indefinitely in the United States.

5. You were not in possession of a valid immigrant visa or other entry document for permanent residence.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document and not exempted from the possession thereof by said Act or regulations made thereunder, under sec. 212(a)(2C) of the Act.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at

20 W. Broadway, New York, N.Y., 14th floor

on May 31, 1974(S) at 1:00 p.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: May 30, 1974

Maurice H. Riley
(signature and title of issuing officer)
ACTING DISTRICT DIRECTOR

NEW YORK (City and State)
DISTRICT

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ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS
THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION
WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE
CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the court, if judicial review is had, you shall be:

☐ Detained in the custody of this Service.

☐ Released on recognizance.

☒ Released under bond in the amount of \$ 1500.00

You may request the Immigration Judge to redetermine this decision.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

☐ I do ☐ do not request a redetermination by an Immigration Judge of the custody decision.

Before:

(signature of respondent)

(signature and title of witnessing officer)

(date)

CERTIFICATE OF SERVICE

Served by me at _____ on _____ 19____ at _____ m.

ONLY COPY AVAILABLE

(signature and title of employee or officer)

COPY RECEIVED
Paul J. Cuman
UNITED STATES ATTORNEY

7/18/75 *(CW)*

